IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 3305 OF 2006**

1. Shri Chandrakant Barku Nakhate ) .. Petitioners.
Aged 39 yrs.Occ.Agriculture & )
& Social Worker, and others. )

V/s.

1. State of Maharashtra ) .. Respondents.
through its Industry, Energy )
and Labour Department, )
Mantralaya,Mumbai32. & 2 Ors. )

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Mr.S.M.Sabrad for the Petitioners.

Mr. P.P.Kakade, AGP for the Respondent Nos 1 and 2.

Ms.Deepa Chavan i/by M/s. Little & Co. for the Respondent No.3.

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**CORAM : F.I. REBELLO AND**
**R.M. SAVANT, JJ.**

**DATED : 28th MARCH, 2007.**

**P.C.** :- (Per R.M.SAVANT,J.)

. The petitioners, who are land owners in village Mahalunge (Ingale Chakan) Tal. Khed, Dist.Pune, have challenged the order dated 24.04.2006 issued by the Respondent No.2 herein, which is based on the communication of the Respondent No.1 to the Respondent No.2 for vacating stay in respect of acquisition of the lands of the petitioners.

2. The lands of the petitioners being Gut Nos. 301 and 305, admeasuring four hectors and twenty-five ares, were notified under sub-section 3 of section 1 of the Maharashtra Industrial Development Act, 1961, (hereinafter referred to as the said Act for brevities sake). As a consequence of the said notification, the lands of the petitioners were part of the area to which Chapter VI of the said Act has become applicable. The said lands were required for establishing an industrial area at Chakan by the Respondent No.3, the Maharashtra Industrial Development Corporation.

3. After the issuance of the said preliminary notification, the notification under sub-section 2 of section 32 came to be issued on 30th January, 1997 and the same was published in the official gazette. The said notification, called upon the lands owners that a personal hearing would be granted to them during a period of one month from the date of issuance of the said notification by the respondent No.2 herein. A public notice was also given in the local newspaper Loksatta, Sanj Samachar on 13.05.1997, 06.06.1997 and 22.05.1997. Individual notices were also served on the persons interested in the lands notified including the petitioners under the subsection 2 of section 32 of the

Act. Thereafter on 24.04.2004, a final notification under section 32(1) came to be issued and published in the official gazette, which include the lands of the petitioners above named. As a consequence of the said notification, the said lands vested in the State Government. In terms of the scheme of the said Act, the Award came to be passed in respect of the lands of the petitioners on 15.05.2005. After declaration of the Award, it appears that the petitioners herein made a representation to the State Government some time on 15.06.2005; and stay was granted on the said representation in respect of the taking over of the lands of the petitioners. The stay was thereafter vacated, as a consequence of which the SLAO proceeded to take possession of the lands in question.

4. On behalf of the petitioners, two contentions were sought to be urged. It was sought to be contended by the learned counsel for the petitioners that the petitioners have been discriminated in the matter of deletion of their lands as certain other lands have been deleted; which were covered by the same Notification. The learned counsel for the petitioners sought to rely upon the letter dated 03.10.2006 of the State Government communicating to the Special Land Acquisition Officer the deletion of those lands. The said letter dated 3rd

of October, 2006 has been annexed to the affidavit in-rejoinder filed by the petitioners. In view of the said affidavit, an additional affidavit has been filed on behalf of the Respondent No.3 Corporation by one Vishwas Nivrutti Kute, who has in paragraph 4 of the said affidavit has explained the position in detail and stated that the deletion of those lands, admeasuring two hectors is in respect of the subsequent notification under section 1(3) dated 04.10.2006 and the said deletion is in respect of the Survey /Gat No. 285/1 to the extent of 0.63 acres, Gat No. 285/2 to the extent of 1 hector and 3 ares and Gat No. 285/5 to the extent of 0.34 acres. In respect of the notification dated 30th January, 1997 under which the petitioners lands have been acquired, no such deletion has taken place.

5. It is significant to note that the petitioners have merely relied upon the said deletion so as to contend that the petitioners lands also ought to have been deleted. It is not the case of the petitioners that the acquisition of the petitioners land are malafide or that the deletion was not bonafide or for extraneous reasons. Merely because other lands have been deleted to the extent of two hectors in an acquisition which involved huge chunk of lands, would not create a right in favour of the petitioners. We,

therefore, do not find any merit in the said submission of the learned counsel for the petitioners.

6. It is next contended on behalf of the petitioners that the State Government had initially granted stay on the application made by the petitioners, purportedly to be under section 48 of the L.A.Act, 1898 for a deletion of the lands in question. Firstly, it has to be borne in mind that the acquisition in question is under the Special Act known as MIDC Act, under which lands can be acquired for the purposes of setting up an industrial area by the Respondent No.2. The scheme of the said Act is, therefore, different from the scheme under the Land Acquisition Act. Under sub-section 4 of section 32 of the said Act, the State Government is vested with the powers to withdraw from acquisition before actual possession is taken. This is an enabling provision, permitting the State Government from withdrawing from acquisition. The said provision would not vest a right in the land holder to claim deletion as a matter of right or that he should be heard on the said application before the State Government rejects the same. In our view, the application made by the petitioners can only be said to be dehors the provisions of the said Act and therefore, the petitioners in our view did not have a right to be heard before the State

Government vacated the stay earlier granted by it in respect of the said acquisition. We, therefore, do not find any merit in the said contention of the petitioners. As held by the Apex Court in the case of Municipal Council Ahmednagar reported in AIR 2000 SC 671 that once an Award has been passed, no writ petition can be filed challenging the acquisition matter or any proceeding thereunder. In that view of the matter, we do not find any case made out by the petitioners for interference in the extraordinary jurisdiction of this court under Article 226 of the Constitution of India and therefore, the petition is dismissed summarily.

7. Since the petitioners were pursuing the remedy of challenging the acquisition of their lands by way of this writ petition and since as per the statement made by the learned counsel for the petitioners, the petitioners are desirous of filing a reference to seek enhancement of compensation. In the aforesaid facts and circumstances, delay in filing the application for reference to be made, would have to be condoned and we direct accordingly, if the petitioner apply for reference within two months from today.

8. With the aforesaid observations, as indicated above, the petition stands dismissed.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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